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Board of Vocational Nursing
and Psychiatric Technicians

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2008-2504

**JISELLE ANNE VILLARETE SALVILLA
11059 Arroyo Drive
Whittier, CA 90604**

A C C U S A T I O N

Vocational Nurse License No. VN 230371

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about October 23, 2007, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 230371 to Jiselle Anne Villarete Salvilla (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein, and expired on January 31, 2011.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Bureau may renew an expired license at any time within four years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the

licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

9. Section 2859 of the Code states:

The practice of vocational nursing within the meaning of this chapter is the performance of services requiring those technical, manual skills acquired by means of a course in an accredited school of vocational nursing, or its equivalent, practiced under the direction of a licensed physician, or registered professional nurse, as defined in Section 2725 of the Business and Professions Code.

A vocational nurse, within the meaning of this chapter, is a person who has met all the legal requirements for a license as a vocational nurse in this State and who for compensation or personal profit engages in vocational nursing as the same is hereinabove defined.

10. Section 2860.5 of the Code states:

A licensed vocational nurse when directed by a physician and surgeon may do all of the following:

(a) Administer medications by hypodermic injection.

(b) Withdraw blood from a patient, if prior thereto such nurse has been instructed by a physician and surgeon and has demonstrated competence to such physician and surgeon in the proper procedure to be employed when withdrawing blood, or has satisfactorily completed a prescribed course of instruction approved by the board, or has demonstrated competence to the satisfaction of the board.

(c) Start and superimpose intravenous fluids if all of the following additional conditions exist:

(1) The nurse has satisfactorily completed a prescribed course of instruction approved by the board or has demonstrated competence to the satisfaction of the board.

(2) The procedure is performed in an organized health care system in accordance with the written standardized procedures adopted by the organized health care system as formulated by a committee which includes representatives of the medical, nursing, and administrative staffs. "Organized health care system," as used in this section, includes facilities licensed pursuant to Section 1250 of the Health and Safety Code, clinics, home health agencies, physician's offices, and public or community health services. Standardized procedures so adopted will be reproduced in writing and made available to total medical and nursing staffs.

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11. Section 2878 of the Code states:

The Board may suspend or revoke a license issued under this chapter [the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840, et seq.)] for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter.

....

(f) Conviction of a crime substantially related to the qualifications, functions, and duties of a licensed vocational nurse, in which event the record of the conviction shall be conclusive evidence of the conviction.

....

(h) Impersonating another practitioner, misrepresenting professional credentials or licensure status, or permitting another person to use his or her certificate or license.

....

(j) The commission of any act involving dishonesty, when that action is related to the duties and functions of the licensee. . . .

12. Section 2878.6 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a licensed vocational nurse is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

13. Section 2878.8 of the Code states:

The board may deny any application or may suspend or revoke any license issued under this chapter [the Vocational Nursing Practice Act] based upon the denial of licensure, suspension, restriction, or other disciplinary action of a license by another state, any other government agency, or by another California health care professional licensing board. A certified copy of the finding shall be conclusive evidence of that action provided that, if from another state, the findings establish an act which if committed in California would be grounds for discipline.

14. Section 2885 of the Code states:

It is unlawful for any person or persons not licensed as provided in this chapter to impersonate in any manner or pretend to be a licensed vocational nurse, or to use the title "Licensed Vocational Nurse," the letters "L.V.N.," or any other name, word or symbol in connection with or following his name so as to lead another or others to believe that he is a licensed vocational nurse.

REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 2521, states:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of Chapter 5 of Division 2 of the Business and Professions Code.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

(d) Aiding or assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and Professions Code.

(e) Conviction of a crime involving fiscal dishonesty.

(f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and Professions Code.

16. California Code of Regulations, Title 16, section 2522 states:

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

(1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

(2) Actual or potential harm to the public.

- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.
- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

COSTS

17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL ALLEGATIONS

18. In or about May 2006, Respondent began employment with Medcare Plus Home Health Providers, (hereinafter "Medcare Plus"), a home health agency.¹ Respondent was not a licensed vocational nurse at the time she applied for employment with Medcare Plus. On Respondent's employment application, she used the title "LVN" after her name.

19. Excel Plus Home Health Services (Excel Plus) and/or Unicare Health Professional (Unicare) were entities that Medcare Plus utilized to pay unlicensed individuals, such as Respondent, who were providing private duty nursing services to sick patients, many of them

¹ A home health agency (HHA) provides medical and non-medical care that is paid for with public or private funds.

1 children, who were beneficiaries of Medi-Cal. Medi-Cal provides reimbursement for medically
2 necessary health care services to indigent persons in California.

3 20. The California Department of Justice (DOJ) Bureau of Medi-Cal Fraud and Elder
4 Abuse (BMFEA) conducted an investigation into the activities involving Medicare Plus, Excel
5 Plus, and Unicare.

6 21. A BMFEA special agent interviewed a former Medicare Plus client, Ms. P, who stated
7 that Respondent was employed in her home, to her knowledge, as a licensed vocational nurse full-
8 time from approximately November 2006 to July 2007. Among her duties, Respondent
9 administered anti-seizure medications (including clonazepam, a controlled substance), liquids,
10 and supplements to J.P., one of the client's two disabled children, through a gastric feeding tube.
11 Respondent cleaned J.P.'s gastric feeding tube and cleaned the area around the tube, and
12 Respondent regularly employed the use of a suction machine on J.P. to remove excess secretions
13 or vomit. Respondent was not trained or licensed to perform these services. Respondent told the
14 BMFEA investigators that she never performed any of the services described by Ms. P., but if she
15 did, they were performed under the supervision of a licensed nurse.² Respondent assumed her
16 coworkers were licensed nurses.

17 22. The BMFEA investigation revealed that Respondent prepared documentation of her
18 visits (using route sheets and/or nursing notes) with the signature lines intentionally left blank,
19 knowing that another co-conspirator would sign the name of an actual licensed vocational nurse
20 to make it appear that a licensed LVN had made the visit, and that Medicare Plus would seek
21 reimbursement from Medi-Cal for an LVN's visit, rather than for the visit Respondent had
22 actually made.

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25 ² Licensed vocational nurses are not permitted to administer controlled substances,
26 conduct venipuncture (unless employed by a blood bank), or conduct intravenous therapy,
27 parenteral or tube feedings, perform invasive procedures including inserting nasogastric tubes,
28 inserting catheters, or tracheal suctioning, or make assessments of a patient's condition. Under no
circumstances can an unlicensed person perform these duties regardless of the level of
supervision.

1 23. On multiple occasions, but specifically on or about July 5, 2007, Respondent was
2 paid by Excel Plus for an LVN visit made to patient J.P. even though she was not a licensed
3 vocational nurse.

4 24. The Board issued to Respondent a Vocational Nurse License on October 23, 2007.
5 On or about December 7, 2007, Respondent and her co-conspirators caused to be submitted to
6 Medi-Cal a claim for payment for LVN services provided on June 1, 2007, in the amount of
7 \$235.28.

8 25. Investigators from the BMFEA interviewed the Director of Nursing (DON) of Excel
9 Plus, who also became the Director of Nursing for Medcare Plus when the owner's registered
10 nurse license was suspended.³ The DON told investigators that Medcare Plus knowingly hired
11 unlicensed persons to conduct vocational nursing duties, and that the unlicensed persons were
12 aware that they would be performing the functions of a vocational nurse when they were hired.
13 Medcare Plus employees were specifically instructed that if they were ever questioned about their
14 duties, they were to state that they were "caregivers" and not nurses. Employees were told to
15 deny that they fed patients through their gastric feeding tubes or suctioned their tracheotomies.
16 The DON further stated that unlicensed nurses were given the names of licensed nurses in the
17 event the parents of the patients attempted to verify their license status. The company continued
18 to use the names and license numbers of LVN's who were no longer employed by the company.

19 26. As a result of the investigation, 44 people employed by Medcare Plus and Excel Plus
20 were arrested in one of the largest Medi-Cal fraud cases in California history. According to the
21 federal indictment, unlicensed and unqualified individuals, many of whom were not U.S. citizens,
22 were sent to private homes to provide nursing services to sick and disabled children across Los
23 Angeles. The agencies would pay the unlicensed individuals \$8 to \$12 an hour but would bill the
24 State of California up to \$35 an hour, per nurse.

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27 ³ The owner of Medcare Plus, Priscilla Villabroza, was convicted in 2008 of five counts of
28 healthcare fraud in federal district court.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(March 8, 2010 Federal Criminal Conviction for Health Care Fraud)**

3 27. Respondent has subjected her license to disciplinary action under sections 490 and
4 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially
5 related to the qualifications, functions, and duties of a licensed vocational nurse. The
6 circumstances are as follows.

7 a. Based on the allegations set forth in paragraphs 18-26, above, on or about
8 March 8, 2010, in a criminal proceeding entitled *United States of America vs. Jiselle Salvilla*, in
9 U.S. District Court, Central District of California, case number CR 09-00609-GAF-3, Respondent
10 was convicted on her plea of guilty of violating Title 18 United States Code section 1347,
11 Respondent admitted that: (a) Respondent knowingly and willfully executed or participated in a
12 scheme to defraud or obtain money from a health care benefit program by submitting false and
13 fraudulent claims to that program; (b) Respondent knew that the claims being submitted to the
14 health care benefits program were false and fraudulent; (c) the false and fraudulent claims were
15 material, in that they would reasonably influence the health care benefits program to pay money
16 to which the provider was not legitimately entitled; (d) Respondent acted with the intent to
17 defraud; and (e) the false and fraudulent claims were made in connection with the delivery of, or
18 payment for, health care benefits, items or services.

19 b. As a result of the conviction, on or about March 8, 2010, Respondent was
20 sentenced to three years probation and ordered to serve 90 days in a home detention program.
21 Respondent was further ordered to pay restitution to her victims in the amount of \$38,561.22.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Out-of-State Discipline)**

24 28. Respondent is subject to disciplinary action under Section 2878.8 of the Code in that
25 Respondent was disciplined by another state nursing board. The circumstances are as follows:

26 a. Respondent was issued practical nurse license number LPN14157 by the
27 Nevada State Board of Nursing (Nevada Board) on October 9, 2008. On or about April 20, 2010,
28 the Nevada Board filed a Complaint and Notice of Hearing, in case number 0206-10C, alleging

1 that Respondent signed a plea agreement in the matter described in paragraph 27, above, and was
2 convicted of violating Title 18 United States Code section 1347. The Complaint alleged that
3 Respondent's conduct constituted grounds for discipline under NRS 632.320(1)(b) because
4 Respondent was convicted of an offense involving moral turpitude, and that it was related to the
5 qualifications, functions or duties of a licensee.

6 b. As a result, Respondent admitted that the factual allegations in the Complaint
7 constituted grounds for discipline and she voluntarily surrendered her practical nurse license in
8 lieu of other disciplinary action, effective May 21, 2010.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct - Impersonating a Licensed Vocational Nurse)**

11 29. Respondent is subject to disciplinary action under section 2878, subdivision (h) for
12 unprofessional conduct in that on or between November 2006 to July 2007, prior to her licensure
13 as a vocational nurse, Respondent misrepresented her professional credentials and licensure status
14 when she administered controlled substances/medications, liquids, and supplements into a
15 disabled child's gastric feeding tube, she maintained the tube, and she employed the use of a
16 suction machine, all without the benefit of a nursing license. Respondent further identified
17 herself as an LVN, in writing, in her employment application in violation of section 2885 of the
18 Code.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct – Violation of Codes)**

21 30. Respondent is subject to disciplinary action under section 2878, subdivision (d) of the
22 Code for unprofessional conduct in that Respondent's actions, as described in paragraphs 18-26,
23 above, demonstrate her direct participation in and her conspiracy to violate provisions and terms
24 of the Business and Professions Code relating to the practice of vocational nursing. Specifically,
25 Respondent practiced vocational nursing without a license in violation of section 2859 of the
26 Code, Respondent held herself out as a vocational nurse in violation of section 2885 of the Code,
27 and Respondent performed the duties outside the scope of a licensed vocational nurse, without
28 benefit of a nursing license, in violation of section 2860.5 of the Code.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Dishonest Acts)**

3 31. Respondent is subject to disciplinary action under section 2878, subdivision (j) of the
4 Code in that Respondent's actions, as described in paragraphs 18-26, above, were dishonest and
5 involved moral turpitude in that she admitted to defrauding the State of California and the
6 government of the United States.

7 **PRAYER**

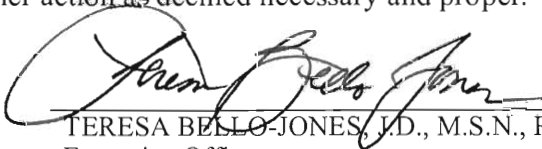
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians
10 issue a decision:

11 1. Revoking or suspending Vocational Nurse License Number VN 230371, issued to
12 Jiselle Anne Villarete Salvilla;

13 2. Ordering Jiselle Anne Villarete Salvilla to pay the Board of Vocational Nursing and
14 Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case,
15 pursuant to Business and Professions Code section 125.3;

16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: April 7, 2011

18 
19 TERESA BELLO-JONES, J.D., M.S.N., R.N.
20 Executive Officer
21 Board of Vocational Nursing and Psychiatric Technicians
22 Department of Consumer Affairs
23 State of California
24 Complainant

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